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STATE OF MICHIGAN
86th Judicial District Court
GRAND TRAVERSE • LEELANAU • ANTRIM COUNTIES

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STATE OF MICHIGAN
86th DISTRICT COURT

ADMINISTRATIVE ORDER 2011-03
Rescinds Order 2005-07

ALTERNATIVE DISPUTE RESOLUTION ("ADR") PLAN
Grand Traverse, Leelanau and Antrim Counties

Pursuant to MCR 2.410, the 86th District Court adopts the following ADR Plan, effective immediately as Administrative Order 2011-03.

Alternative Dispute Resolution ("ADR") means "any process designed to resolve a legal dispute in the place of court adjudication." ADR includes settlement conferences ordered under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; and other procedures provided by local court rule or ordered on stipulation of the parties; e.g. arbitration, summary jury trial.

All civil cases are subject to ADR processes unless otherwise provided by statute or court rule.

Because of the expedited nature of Summary Proceedings (Landlord/Tenant and Land Contract Forfeiture), such cases generally will not be referred to ADR.

Small Claims litigants will be encouraged to mediate their disputes on a voluntary basis through Conflict Resolution Services ("CRS").

ADR CLERK

The Court shall appoint an ADR Clerk. Currently, the ADR Clerk is Office Coordinator, Tina Lehn. The ADR Clerk shall maintain all records pertaining to the Court's ADR Program, including applications for and lists of case evaluators and civil

facilitative mediators. The ADR Clerk shall be responsible for coordinating the referral of cases to ADR and tracking the progress of cases through ADR processes.

DISSEMINATION OF INFORMATION REGARDING ADR

The ADR Clerk shall be responsible for disseminating information about the Court's ADR Program to litigants and the general public.

FORMS OF ALTERNATIVE DISPUTE RESOLUTION

Under MCR 2.403, the Court may submit any civil action in which the relief sought is primarily money damages to case evaluation (formerly known as court rules mediation). "Case evaluation" is a process by which a panel of three qualified case evaluators assesses the relative strengths and weaknesses of the party's legal positions and immediately assigns a value to the case. Rejection of a case evaluation may result in the subsequent assessment of significant monetary sanctions.

Under MCR 2.411, the Court may refer any civil action to mediation. "Mediation" is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutual acceptable settlement. A mediator has no authoritative decision-making power and the process itself does not trigger a subsequent exposure to monetary sanctions. Under MCR 2.401, the Court may order one or more settlement conferences.

CASE SCREENING

In most civil cases, at the time of issuing its Pretrial Order, the Court shall determine whether the case is appropriate for Case Evaluation, Facilitative Mediation and/or Settlement Conferences.

CASE EVALUATION

Under MCR 2.403, the Court may submit any civil action in which the relief sought is primarily money damages to case evaluation (formerly known as court rules mediation). "Case evaluation" is a process by which a panel of three qualified case evaluators assesses the relative strengths and weaknesses of the party's legal positions and immediately assigns a value to the case. Rejection of a case evaluation may result in the subsequent assessment of significant monetary sanctions.

ELIGIBILITY: To be eligible to serve as a **case evaluator**, a person must meet the following qualifications:

- a. The applicant must have been a practicing lawyer for at least five years and a member in good standing with the State Bar of Michigan.

- b. The applicant must reside, maintain an office, or have an active practice in the 86th District Court's jurisdiction or other northwestern Michigan district.
- c. The applicant must demonstrate that a substantial portion of the applicant's practice for the last five years has been devoted to civil litigation matters.
- d. All case evaluators on the 13th Circuit Court roster shall be considered qualified to serve in the 86th District Court.
- e. Any lawyer who has specialized training, but does not meet the specific requirements listed above, may apply to the ADR Clerk for special approval.
- f. Case evaluators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristics.
- g. Case evaluators must comply with the Court's ADR Plan, orders of the Court regarding cases submitted to case evaluation, and conduct themselves with honesty, integrity and impartiality.

The ADR Clerk shall assign case evaluations on a random basis.

FACILITATIVE MEDIATION
Conflict Resolution Services, Inc.

The Court may order Facilitative Mediation with Conflict Resolution Services (CRS). The Plaintiff will be responsible for contacting CRS within seven (7) days of the court ordering CRS mediation and the mediation is to be held as soon as reasonably possible thereafter in accordance with the rules of CRS.

CRS maintains a separate mediation application process - please check with CRS for further information. It is not required that CRS mediators be attorneys.

FACILITATIVE MEDIATION-DISTRICT COURT MEDIATORS

(1) DISTRICT COURT MEDIATORS: Mediation may also be conducted by District Court mediators agreed to by the parties. If the parties wish to agree to a mediator, they must inform the mediation clerk in writing of the agreed upon mediator within seven (7) days from the date of the pretrial order. Such agreed upon mediators need not be from the Court's list of mediators. District Court mediation shall be limited to four (4) hours unless all parties agree to extend the mediation beyond four hours.

(2) APPLICATION FOR FACILITATIVE MEDIATOR: An eligible person desiring to serve as a Facilitative Mediator may submit an Application. Application forms are available in the office of the ADR Clerk. The application form includes a certification that the applicant meets the requirements for service and that the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender or other protected personal characteristics.

To be eligible to serve as a **facilitative mediator**, a person must meet the following qualifications:

- A. Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;
- B. Have one or more of the following:
 - (i) Juris doctor degree or graduate degree in conflict resolution; or
 - (ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.
- C. Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator.
- D. An applicant who has specialized experience or training, but does not meet the specific requirement described above, may apply to the ADR Clerk for special approval. The ADR Clerk shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator.
- E. Approved mediators are required to obtain eight hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is grounds for removal from the list.
- F. Facilitative mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristics.
- G. Facilitative mediators must comply with the Court's ADR Plan, orders of the court regarding cases submitted to mediation, and the Standards of Conduct for Mediators promulgated by the State Court Administrator.

Applications to serve as a facilitative mediator shall include a certification that the applicant agrees to fulfill the mediator's responsibilities in an impartial manner consistent with the rules and practices of the court. The certificate for mediators will

also state the fee that will be charged or the basis on which the applicant agrees to have the fee determined. A resume with fee information shall be filed with the ADR Clerk and maintained in the Civil Division for review by parties and their attorneys.

(3) REVIEW OF APPLICATIONS: The Court will disseminate information to potentially interested persons that the review process is approaching. Any person interested in providing mediation services shall submit an application to the ADR Clerk.

Applicants who are not found qualified for placement shall be notified of that decision by the ADR Clerk. Applicants will have 21 days to apply for reconsideration by the Chief District Judge. Any documents considered in the initial review process shall be retained for at least the 21 days described above. The appeal and all related documents must be filed with the ADR Clerk, with a copy to the Chief District Judge.

(4) REAPPLICATION: Persons shall be placed on the list of mediators for a fixed period of time, not to exceed five years, and must reapply at the end of that period in the same manner as persons seeking to be added to the list.

(5) AVAILABILITY OF LIST: The list of mediators with resumes and mediation services are available to the public. Copies may be obtained from the ADR Clerk at the 86th District Court.

(6) EXISTING MEDIATION LIST: Mediators that have previously applied and are on the existing list are not required to reapply at this time.

(7) ASSIGNMENT OF MEDIATORS: The Court will refer cases to general civil mediation by an order of referral which may be contained within the Court's Civil Scheduling Conference Order. A list of court-approved mediators and mediation services will be provided to the parties. A separate list will be kept for each county. The attorneys or the parties, if unrepresented, shall confer and select a mediator or mediation service within seven (7) days of the date of the order and notify the ADR Clerk. The mediator or mediation service shall advise the ADR Clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator with a copy of the Civil Scheduling Conference Order.

In the event that the parties do not notify the ADR Clerk of their selection within the seven (7) days allowed, the ADR Clerk will select a mediator without notice to the parties and advise the parties or their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator in a random or rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. Once the ADR Clerk selects a mediator, the parties are responsible for any fees generated by that mediator or service.

Any party, by timely motion, may object to the referral of their case to mediation. The Court's referral order makes this right clear to counsel and parties.

(8) ROTATION REPORT: The ADR Clerk shall maintain records that reflect the number of times each mediator was used in a case in which the parties did not stipulate to their own mediator. The ADR Clerk shall prepare an annual report of this information. The annual report shall be made available to all mediators and the general public.

(9) MEDIATOR COMPENSATION: A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed. Before mediation, the parties shall agree in writing on the fee, when it will be paid and by whom in accordance with MCR 2.411(J).

FINAL SETTLEMENT CONFERENCE

A final settlement conference may be scheduled in a case after discovery has been completed, all motions have been heard and other ADR options have been explored. (MCR 2.401) The purpose of the final settlement conference is to give the parties and their counsel one last, court-assisted opportunity before trial to settle the case or to narrow the disputed issues and discuss how the trial will proceed. Each party and person(s) with authority to settle the case, as well as the attorney who will be trying the case, are required to attend. At the conference, the parties will tender a trial brief and marked exhibits to the Court. If the case is scheduled for a non-jury trial, they will also tender stipulated facts and proposed findings of fact and conclusions of law. If the case is scheduled for a jury trial, they will also tender written full text jury instructions and a proposed verdict form.

ARBITRATION AND OTHER ADR PROCESSES

Nothing in this ADR Plan shall preclude the parties from stipulating to an ADR process of their choice so long as the schedule for completing same does not interfere with the Court's scheduling and the orderly progression of the case. Parties are encouraged to pursue any form of ADR which they believe will assist them in resolving their disputes. Arbitration may be pursued through a private arbitrator or arbitration service or through the American Arbitration Association. Information regarding private arbitrators, local arbitration services and arbitration through the American Arbitration Association is available through the ADR Clerk.

ADR FOR INDIGENT LITIGANTS

The Court shall take steps to make mediation available to indigent litigants. A litigant is "indigent" if he or she qualifies for the waiver or suspension of fees or costs in accordance with MCR 2.002(C) or (D).

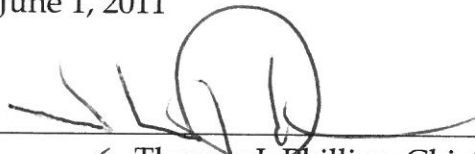
The Court shall encourage mediators who receive referrals from the court to provide a portion of their services on a free or reduced fee basis. The Court may also refer indigent cases to Conflict Resolution Services (CRS) for mediation and the rules of CRS shall apply.

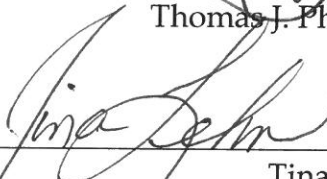
SUPERVISION

The Chief Judge shall exercise general supervision over the implementation of this Plan and the case evaluator and mediator selection process and shall review the operation of the Court's ADR Plan at least annually to assure compliance. In the event of non-compliance, the Court shall take such action as is needed. This action may include recruiting persons to serve as case evaluators and mediators or changing the Court's ADR Plan. The Court shall develop a set of quality assurance questionnaires to be completed by the mediator, attorneys and litigants that will be distributed by the mediator at every mediation. The ADR Clerk will review the questionnaires and notify the Chief Judge of any concerns. The Court shall take such action as is needed to investigate and resolve any problems. The Court shall submit an annual report to the State Court Administrator on the operation of the Court's ADR program on a form provided by the State Court Administrator.

In implementing the ADR Plan, the Court, Court employees, members of bar committees, and any other person involved in the application review procedure shall take all steps necessary to assure that as far as reasonably possible, the list of case evaluators fairly reflects the racial, ethnic and gender diversity of the members of the state bar in the jurisdiction for which the list is compiled who are eligible to serve as case evaluators. They shall also take all steps necessary to assure that as far as reasonably possible, the lists of mediators reflects the racial, ethnic, and gender diversity of the members of the community who are eligible to serve as mediators.

Dated: June 1, 2011



Thomas J. Phillips, Chief Judge

Tina Lehn, ADR Clerk